Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: Havice | Analyst: Colin Stevens | Bill Number: AB 414

Related Bills: AB 463 (1999) | Telephone: 845-3036 | Amended Date: 3/24/99

Attorney: Doug Bramhall | Sponsor:

SUBJECT: Statute Of Limitations For Refunds

SUMMARY OF BILL

Under the Administration of Franchise and Income Tax Laws (AFITL), this bill would modify the statute of limitation (SOL) applicable to credits and claims for refund. This bill would begin the four-year statute on the date the return was deemed filed, if the return was timely filed by the extended due date.

SUMMARY OF AMENDMENT

The March 24, 1999, amendments removed the prior, nonsubstantive provisions relating to time limits for deficiency assessments or allowing claims for credit or refund and added the provisions discussed in this analysis.

EFFECTIVE DATE

This bill specifies that it would apply to all claims for refund and credits for which the SOL has not expired as of the bill's effective date.

SPECIFIC FINDINGS

The AFITL provides specific statutory rules governing the time periods within which, with some exceptions, the Franchise Tax Board (FTB) may assess additional tax or a taxpayer may claim a refund or credit against tax. These rules governing time periods are commonly referred to as statutes of limitation.

If the tax shown on the original or amended return by the taxpayer is less than the correct amount of tax, **the AFITL** requires the FTB to mail a notice of proposed deficiency assessment (NPA) prior to the expiration of the applicable SOL.

Except in specified cases, every NPA must be mailed to the taxpayer within four years after the return was filed, or four years after the original due date of the return, whichever is later. If the NPA is not mailed within this period, the SOL is considered closed and the deficiency may not be assessed or collected. Instances which allow the four-year SOL to be disregarded by the FTB include cases such as (1) false and fraudulent returns, (2) taxpayers omitting from gross income an amount which exceeds 25% of the gross income stated on the return, (3) state tax changes resulting from a correction made by the Internal Revenue Service (IRS) to the federal tax return, and (4) certain items relating to partnerships. In addition, there is no SOL if a return was not filed.

Board Position:			Department Director	Date
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____ N	____ OUA	X PENDING	**Gerald Goldberg**	**4/2/1999**

The four-year SOL period also may be extended if the taxpayer consents in writing.

In contrast to the SOL for deficiency assessments, **the AFITL** provides that a credit or a claim for refund cannot be made after the later of (1) four years from the original due date of the tax return or (2) one year from the date of the overpayment, whichever is later.

Generally, if the FTB finds that there has been an overpayment of tax or penalty or interest by a taxpayer for any reason, the amount of the overpayment is credited by the FTB against any amount then due and the balance is refunded to the taxpayer. A taxpayer may file a claim for refund by sending a letter with a reason for the claim and proper substantiation to the Franchise Tax Board; filing an amended return or a protest or appeal; or, for executors of a deceased taxpayer, filing a federal Form 1310.

California law automatically grants a person a six-month extension of time to file a California return under the Personal Income Tax Law. An additional extension may be granted to individual taxpayers residing or traveling abroad. A seven-month extension is allowed for corporate tax returns. However, for all taxpayers, the tax is still due by the original due date of the return, not the extended date.

Under the AFITL, **this bill** would modify the SOL applicable to credits and claims for refund to provide that the claim must be filed within four years after the return was actually filed, if the return was timely filed by the extended due date. For timely-filed returns, this would eliminate the difference in the SOL applicable to proposed deficiency assessments and claims for refund or credit.

Policy Considerations

Under current law, taxpayers filing claims for refund have a shorter SOL than the SOL for the FTB to assess tax deficiencies. This bill would provide greater equity to taxpayers by specifying that taxpayers have the same SOL for claims for refund or credits as exists for deficiency assessments for timely-filed returns.

Implementation Considerations

This bill could be implemented during normal annual updates and is not expected to significantly impact the department.

FISCAL IMPACT

Departmental Costs

This bill is not expected to result in significant costs to the department.

Tax Revenue Estimate

The number and amount of additional credits and/or refunds allowable would determine the revenue impact of this bill. Sufficient data do not exist to estimate a potential impact in any given year. Audit and Legal staffs suggest that the number of cases would be limited.

Upon enactment, the bill would be effective for all claims for refund for which the statute of limitations has not expired.

BOARD POSITION

Pending.

Although the Franchise Tax Board has not taken a position on this bill, the Board voted December 16, 1998, to sponsor identical language, which is in AB 463 introduced February 16, 1999.